



February 6, 2006

NEPA Draft Report Comments  
c/o NEPA Task Force  
Committee on Resources  
1324 Longworth House Office Building

*Re: INGAA Comments on Initial Findings and Draft Recommendations of Task Force on Improving and Updating NEPA, Committee on Resources, U.S. House of Representatives*

INGAA is a non-profit trade association representing virtually all interstate natural gas transmission pipeline companies operating in the United States and interprovincial pipelines operating in Canada, as well as natural gas companies in Mexico and Europe. INGAA's U.S. members operate over 200,000 miles of pipeline and related facilities and account for over 90 percent of all natural gas transported and sold in interstate commerce.

An INGAA Foundation analysis predicts that natural gas consumption in the United States should approach 30 Tcf by the end of the next decade if the supply of gas is developed. To facilitate this growth, large amounts of infrastructure, including pipeline capacity, storage and LNG terminal facilities must be built in North America. Delays of only two years in getting projects built could result in negative economic consequences to natural gas consumers of up to \$200 billion<sup>1</sup>.

The Federal Energy Regulatory Commission (FERC) must approve all new interstate natural gas pipelines and any expansions to existing interstate natural gas systems, including storage fields and liquid natural gas (LNG) import facilities. The FERC approval process includes the appropriate National Environmental Policy Act (NEPA) review as well as verification that applicants obtain permits from numerous federal, state and local agencies before construction may begin.

As a result, INGAA member companies are greatly impacted by NEPA and appreciate your efforts and the opportunity to submit comments to the House Task Force on Updating the National Environmental Policy Act. INGAA has been active in this proceeding by filing written comments and also by submitting oral testimony during the field hearing held in Norfolk, VA on September 16, 2005. INGAA appreciates the effort of the Task Force and also offers its continuing support and assistance in whatever manner is beneficial to a successful outcome. We thank you and look forward to working with all stakeholders to better the project approval process. If you have any questions, Please feel free to contact me at (202) 216-5935 or LBEAL@INGAA.ORG.

Respectfully submitted,

Lisa S. Beal  
Director, Environment & Construction Policy  
Attachments (1)

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<sup>1</sup>Interstate Natural Gas Association of America (INGAA). 2004. Foundation Study: "An Updated Assessment of Pipeline and Storage Infrastructure for the North American Gas Market: Adverse Consequences of Delays in the Construction of Natural Gas Infrastructure." The INGAA Foundation. F-2004-01. July 2004.

**Comments of  
Interstate Natural Gas Association of America (INGAA)  
On  
Initial Findings and Draft Recommendations  
Of Task Force on Improving and Updating the National Environmental Policy Act  
(NEPA)  
Committee on Resources, United States House of Representatives**

The Interstate Natural Gas Association of America (INGAA) represents virtually all of the major interstate natural gas transmission companies operating in the United States and interprovincial pipelines operating in Canada, as well as natural gas companies in Mexico. INGAA's United States members, which account for over 90 percent of all natural gas transported and sold in interstate commerce, are regulated by the Federal Energy Regulatory Commission (FERC) pursuant to the Natural Gas Act (NGA), 15 U.S.C. §§ 717-717w.

The following comments are offered on behalf of INGAA on the initial findings and draft recommendations made in a report dated December 21, 2005 prepared by the staff to the Task Force on Improving the National Environmental Policy Act (NEPA) and Task Force on Updating the NEPA. INGAA appreciates the opportunity to offer comments on the draft and complements the House of Representatives, the Committee on Resources, and the Task Force on undertaking the effort to analyze NEPA's historical successes and shortcomings and examine ways of improving and updating this important Act.

First, INGAA takes exception with the statement made in the Executive Summary of the report, under the heading **"Additional highlights of the findings are:"** the fifth bullet under that heading indicates; **"NEPA and other environmental laws do work in concert. However, there are many instances of redundant environmental analysis."** Although it is almost expected to say that NEPA and other environmental laws do work in concert, the real world of regulatory compliance would indicate the opposite and that is one of the major reasons that Congress has chosen to take an in-depth look at NEPA and seek areas for improvement. As previously pointed out in INGAA's written and oral testimony before this Task Force, many of the environmental laws appear to provide confusing and even contradictory authority to NEPA. This is apparent in the Energy Policy Act passed in 2005 when Congress attempted to eliminate some of the confusion that has existed with the environmental review and permitting of energy projects. The problem has been at times that different federal, state and local jurisdictions attempt to claim duplicate "lead agency" status on natural gas pipeline projects, or even worse, to withhold certain permitting clearances required by other federal laws until all of the other permits are received by the applicant and submitted to them. This presents the "chicken or the egg" scenario and doesn't lend itself to obtaining all the information early in the process for a single NEPA review, analysis and decision-making. This duplication of effort adds to timing delays, which lead to uncertainty and increased cost of the project. INGAA would encourage the Task Force to remove the fifth bullet identified above and consider plainly stating for the record in this proceeding that this uncertainty and

confusion exists between NEPA's authority and the authority provided over the years through other legislation, and these laws often do not work in the concert intended.

INGAA also offers comments related to the 22 recommendations set out in the draft and presents these comments by the organized group reflected in the document.

- **Group 1 – Addressing delays in the process**
  - **Recommendation 1.1: Amend NEPA to define “Major federal action.”** INGAA supports the statements made in this recommendation and urges the Task Force to adopt this finding in the final report.
  - **Recommendation 1.2: Amend NEPA to add mandatory timelines for the completion of NEPA documents.** INGAA supports this finding and urges adoption by the Task Force in the final report.
  - **Recommendation 1.3: Amend NEPA to create unambiguous criteria for the use of Categorical Exclusions (CE), Environmental Assessments (EA) and Environmental Impact Statements (EIS).** This recommendation is a very important one in providing some streamlining to the cumbersome existing process of the NEPA review and clearance process. By providing a more clear differentiation between the requirements of EA's and EIS's, NEPA could bring some initial certainty to the processing of the potential impacts of a federal action and promote the use of the correct level of review. Clarity is needed and this will help to bring that about. CE's should be expanded. The environmental impacts that are clearly minimal or incidental in a natural gas pipeline project should not be investigated or reviewed, but rather excluded from the evaluation process. This would enable the agencies to focus on the major impacts and more quickly bring to bear the proper mitigation for those potential developmental impacts. The Council on Environmental Quality (CEQ) should be required to work with industry and develop a generic list of activities, materials or data that would be excluded (categorically) from the NEPA preparation and review process. Since this type of minimal impact activity, material or data are not pertinent to the decision making process of whether or not the proposed action will be a major federal action or what mitigation may be required for such action these exclusions would be just and proper. This would improve the process and expedite the findings.

It is worth noting that natural gas pipelines jurisdictional to the Federal Energy Regulatory Commission (FERC) already employ a CE-like process for construction/maintenance/repair activities below a

threshold dollar amount. This “blanket certificate process” allows pipelines which have already been approved and constructed to perform certain additional construction activities so long as they are relatively minor in scope.

- **Recommendation 1.4: Amend NEPA to address supplemental NEPA documents.** INGAA supports this finding and urges adoption by the Task Force in the final report.
- **Group 2 – Enhancing Public Participation**
  - **Recommendation 2.1: Direct CEO to prepare regulations giving weight to localized comments.** INGAA supports this finding and urges adoption by the Task Force in the final report.
  - **Recommendation 2.2: Amend NEPA to codify the EIS page limits set forth in 40 CFR 1502.7.** INGAA supports this finding and urges adoption by the Task Force in the final report.
- **Group 3 – Better Involvement for State, Local and Tribal Stakeholders**
  - **Recommendation 3.1: Amend NEPA to grant tribal, state and local stakeholders cooperating agency status.** INGAA does not support this recommendation in its current form. To amend NEPA to automatically grant any local stakeholder “cooperating agency status” does not improve or streamline the NEPA review and decision making process. In fact, to codify such approval would encumber and slowdown the overall process. There is already a mechanism in place for tribal, state and local stakeholders to enter into the process. Their views and opinions can be heard and considered by the cooperating agencies reviewing the overall proposal. There is need warranting such automatic approval to improve the process. If an amendment on this issue is necessary, then the Task Force should recommend the burden of proof be placed on the entity or person requesting “cooperating agency status” to make a showing as to why the lead agency should grant their request. Perhaps a minimum checklist of criteria could be developed under which the lead agency could make a decision about whether to grant cooperating agency status. If a credible showing is furnished then the lead agency could approve the request. An automatic grant of cooperating status does not improve the process or meaningfully improve public participation in NEPA.
  - **Recommendation 3.2: Direct CEO to prepare regulations that allow existing state environmental review process to satisfy NEPA requirements.** INGAA supports this finding and urges adoption by the Task Force in the final report.

- **Group 4 – Addressing Litigation Issues**
  - **Recommendation 4.1: Amend NEPA to create a citizen suit provision.** While this provision is well intentioned, INGAA is concerned that it could result in increased frivolous lawsuits and delays. If the Task Force feels that the citizen suit option is important to any reform effort, we would recommend a shorter timeframe for filing a challenge – to 90 days, for example.
  - **Recommendation 4.2: Amend NEPA to add a requirement that agencies “pre-clear” projects.** INGAA supports this finding and urges adoption by the Task Force in the final report.
- **Group 5 – Clarifying Alternatives Analysis**
  - **Recommendation 5.1: Amend NEPA to require that “reasonable alternatives” analyzed in NEPA documents be limited to those which are economically and technically feasible.** INGAA supports this important finding and urges the adoption of such an amendment by the Task Force in the final report.
  - **Recommendation 5.2: Amend NEPA to clarify that the alternative analysis must include consideration of the environmental impact of not taking an action on any proposed project.** INGAA requests that the Task Force clarify this proposed amendment very carefully. Clarification is needed, as it appears that enacting such an amendment would place a lead agency in the position of having to offer a finding of “public need” prior to considering the “no action alternative.” How could any lead agency weigh the impacts of executing the project versus the “no action alternative” unless it considers the “no action alternative?” If the intent is for the proposed developer to furnish more information for the “no action alternative,” then NEPA should plainly call-out what information is expected to satisfy that analysis.
  - **Recommendation 5.3: Direct CEQ to promulgate regulations to make mitigation proposals mandatory.** INGAA seeks further clarification of this proposal. Such a proposal for CEQ to craft new regulations related to mitigation must be completely clear on all points. INGAA suggests that if CEQ is directed to craft regulations that would require agencies to include with any mitigation proposal a binding commitment to proceed with the mitigation, that CEQ be further directed to make it clear to all parties that the mitigation proposal does not have to be complete when the permit is issued. Rather, such warranted mitigation could be made a condition of the agency’s order and legally enforceable. To create another layer or barrier to expediting the NEPA review and decision process by requiring the private sector to complete all mitigation proposals prior to the issue of

a license or permit would not save time or cost. In fact, the opposite would be true.

- **Group 6 – Better Federal Agency Coordination**

- **Recommendation 6.1: Direct CEQ to promulgate regulations to encourage more consultation with stakeholders.** INGAA supports this finding and would like to stress that a clear communication plan is needed on the agency side of the equation. Current regulations require that an applicant furnish the lead agency (Federal Energy Regulatory Commission for natural gas pipeline projects), with a communication plan during the filing process for a permit. However, there is no requirement for the FERC to furnish any applicant with an agency communication plan. How and when the agency communicates with the applicant and interested stakeholders is not clearly disclosed. Such direction to the CEQ would improve the process.
- **Recommendation 6.2: Amend NEPA to codify CEQ regulation 1501.5 regarding lead agencies.** INGAA supports this finding and believes that the authority of the lead agency should be applied horizontally to cover all cases. Anything that the Task Force can do to recommend such clarification of lead agency authority would be beneficial to natural gas pipeline projects.

- **Group 7 – Additional Authority for the Council on Environmental Quality**

- **Recommendation 7.1: Amend NEPA to create a “NEPA Ombudsman” within the Council on Environmental Quality.** INGAA supports this finding and urges adoption by the Task Force in the final report. This would definitely be a step in the right direction to streamline areas or issues of conflict resolution.
- **Recommendation 7.2: Direct CEQ to control NEPA related costs.** INGAA supports this finding and urges adoption by the Task Force in the final report.

- **Group 8 – Clarify meaning of “cumulative impacts”**

- **Recommendation 8.1: Amend NEPA to clarify how agencies would evaluate the effect of past actions for assessing cumulative impacts.** INGAA would urge the Task Force to consider also amending NEPA to include a review by CEQ of how an agency establishes the criteria for assessment of existing environmental conditions to serve as the methodology to account for past actions. If, there is a dispute between the developer and the agency on how the agency has determined that cumulative impacts have been assessed in the evaluation of past actions,

such an independent review could be very valuable in maintaining the streamlining of the process. The methodology of how the agency accounts for past actions would only be raised (possibly to the new CEQ ombudsman position), if the applicant had a conflict with the assessment. Otherwise, INGAA supports this finding and urges inclusion in the final report.

- **Recommendation 8.2: Direct CEQ to promulgate regulations to make clear which types of future actions are appropriate for consideration under the cumulative impact analysis.** INGAA supports this finding and urges the Task Force to include it in the final report.

- **Group 9 – Studies**

- **Recommendation 9.1: CEQ study of NEPA’s interaction with other Federal environmental laws.** INGAA supports this finding and urges the Task Force to adopt it in its final report.
- **Recommendation 9.2: CEQ Study of current Federal agency NEPA staffing issues.** INGAA support this finding and urges inclusion by the Task Force in the final report.
- **Recommendation 9.3: CEQ study of NEPA’s interaction with state “mini-NEPA’s” and similar laws.** INGAA supports this finding and views this study as a critical step in determining what other amendments or changes may be necessary within NEPA to eliminate duplication and excess costs associated with the NEPA review and decision making process. INGAA urges the Task Force to adopt this and include it in its final report.

**John H. Shafer**

**Manager, Sustainable Natural Resource Practices  
NiSource Corporate Services Company**

**Appearing on Behalf of  
Interstate Natural Gas Association of America**



**Testimony  
Before the Committee on Resources  
United States House of Representatives**

**Hearing on The Role of NEPA in the Mid-Atlantic States  
September 17, 2005**



**John H. Shafer**  
**Testimony before the Committee on Resources, U.S. House of Representatives**  
**related to The Role of NEPA in the Mid-Atlantic States**

**Opening Remarks:**

My name is John H. Shafer and I reside in Benton, Louisiana. I am currently employed by NiSource Corporate Services as Manager of Sustainable Natural Resource Practices. As an energy sector professional, I have over 35 years of experience in environmental and regulatory planning and permitting. This experience includes the siting, permitting and construction of petroleum and natural gas facilities such as pipelines and terminals. I also served as Assistant Director of Environmental Policy at the White House in 1993, during which time I created the President's Council on Sustainable Development.

NiSource Inc. is a fully integrated energy company and it engages in natural gas transmission, storage and distribution, as well as electric generation, transmission and distribution. NiSource operating companies deliver energy to 3.7 million customers located within the high demand energy corridor that runs from the Gulf Coast through the Midwest to New England. NiSource pipelines and distribution subsidiaries are active in several Mid-Atlantic States such as Maryland, Virginia and West Virginia. NiSource distribution companies are experiencing growth in that region and its pipelines are experiencing opportunities for growth to meet market demand.

NiSource is a member of the Interstate Natural Gas Association of America (INGAA) and I am pleased to appear here today to represent INGAA in these proceedings. INGAA is a trade organization that represents virtually all of the interstate natural gas transmission pipeline companies operating in the U.S., as well as comparable companies in Canada and Mexico. Its members transport over 95 percent of the nation's natural gas through a network of 180,000 miles of pipelines.

First, I would like to thank you, Representative McMorris for your leadership in Chairing this Task Force, and House Resources Committee Chairman Richard Pombo, and the other Task Force Members and the staff for your willingness to review NEPA and look for opportunities to improve the environmental review and mitigation process.

Many of you are acutely aware that natural gas markets are currently in a delicate balance of supply and demand, which is driving up prices. This tight supply/demand balance makes the natural gas market even more sensitive to supply disruptions such as the one that occurred with Hurricane Katrina two weeks ago. Our industry is still assessing the damage from the storm, and we will clearly be working for some months on repairs, but I would like to share some initial thoughts today.

Natural gas pipelines in the Gulf region did sustain some damage as a result of Hurricane Katrina, although most of the damage was minor and natural gas deliveries to

other regions of the country have largely continued. However, a number of off-shore production facilities were damaged, and perhaps most troubling, several key natural gas processing facilities in the area sustained major damage. While off-shore production in the Gulf is gradually coming back on line, these processing plants may be out for as long as six months. Natural gas processing is critical, especially during cold weather periods, to ensure that the gas has acceptable quality and does not damage pipelines and end-use equipment. Getting these processing facilities back into operation before the winter heating season should be a priority.

In addition, the nation's natural gas storage has been impacted by the hurricane. Natural gas storage is a critical component to meeting winter peak demand; on the coldest days of the year, a given market area may be meeting 30 to 50 percent of its natural gas demand through storage withdrawals. Therefore, it's important that gas storage reservoirs be filled during the fall in order to be ready for winter. With gas production and processing at reduced levels, however, current storage injections have slowed, and in fact some storage in the Gulf region has already been withdrawn in order to meet immediate demand. This is yet another reason to get pipelines, production and processing back on line as soon as possible.

As you can see, the delicate balance that exists for the natural gas industry to meet energy demand in the U.S. is reason enough to eliminate unnecessary permitting delays for gas infrastructure. Our economic security often depends on the timely expansion, or repair, of these energy facilities. In fact, a study completed by the INGAA Foundation last year, which looked at delays in needed natural gas infrastructure projects, suggested that a two-year delay in getting such projects built would cost American consumers \$200 billion by 2020. Let me repeat that: \$200 billion by 2020, and that is only for delays, not project cancellations. I would be happy to provide a copy of this report to the Committee for the record.

This leads me to the topic of today's hearing, the National Environmental Policy Act (NEPA). In the 35 years since its enactment, compliance with NEPA has taken progressively longer and longer for natural gas projects. We do not, however, propose to alter the objectives of the NEPA. On the contrary, NEPA remains an important environmental safeguard, balancing the needs of economic development with the need to protect environmental quality. Our suggested solutions deal with the implementation of NEPA, and in particular, the ways different federal and state permitting agencies should work together under the Act. I am happy to report that a number of these solutions were part of the recently enacted Energy Policy Act of 2005 (Public Law 109-58), at least with respect to natural gas projects approved by the Federal Energy Regulatory Commission (FERC). Our association has grappled with the issue of NEPA compliance for many years, looking specifically at ways to reduce unnecessary delays and improve cooperation among the many federal and state agencies that might be reviewing a proposed project. These suggestions do not alter existing environmental quality standards. They do, however, increase the level of accountability, cooperation and efficiency among permitting agencies – hardly an unfair or unreasonable set of expectations. We hope the

Committee will look at extending these ideas to all types of energy project reviews under NEPA, not just FERC-approved natural gas projects. Here are our suggestions:

**Recommendation 1 – Establish a clearly defined “lead agency” for each type of proposed project.**

On any given proposed project for development, there can be conflict among agencies as to who should take the lead. There does need to be one lead agency for each type of project though, and direction from Congress or the Council on Environmental Quality (CEQ) could resolve such conflict before it arises. For example, Section 313 of the new Energy Policy Act designates the FERC as the lead agency under NEPA for all projects requiring an authorization or approval pursuant to the Natural Gas Act; in other words, all interstate natural gas pipelines, storage facilities, or LNG import terminals. The lead agency should be one that has primary responsibility for the ultimate approval of an activity or project.

**Recommendation 2 – Allow the lead agency to institute specific timelines for NEPA reviews.**

This recommendation is important to keeping the review process manageable while providing some time certainty to applicants. While most agencies are willing to work with the sister organizations in a cooperative manner, our own experience in the gas pipeline industry is that some agencies will use inaction as a way to delay and even kill a project. If the lead agency is empowered to set a schedule, and to establish joint agency meetings and reviews, then the process becomes more cooperative and efficient as agencies negotiate face-to-face rather than from some distance. Here again, Section 313 of the Energy Policy Act allows the FERC, for pipeline and LNG projects, to set such a schedule. However, the Act also states that the FERC should incorporate any existing timeframes any agency might have to reach a decision on a permit. An amendment to NEPA should establish that the lead agency has overall authority to establish a time schedule for review and all cooperating agencies must act within that time frame.

**Recommendation 3 – Ability to enforce a lead agency deadline.**

Ideally, the ability to set a deadline should be coupled with a way to enforce the deadline, so that agencies take a lead agency deadline seriously. Several earlier versions of the Energy Policy Act contained a provision requiring cooperated agencies to either act within the FERC-approved deadline (for natural gas projects), or else have their approval “conclusively presumed.” Both the Coastal Zone Management Act (CZMA) and the Clean Water Act contain deadlines for state enforcement agencies to either make permitting decisions or have their approval assumed, so the proposals in the energy bill debate weren’t all that unusual. Nonetheless, the Energy Bill Conference Committee decided to be more conciliatory, by instead allowing an applicant to appeal an agency permitting delay to the U.S. Court of Appeals for the D.C. Circuit. We believe there

must be a mechanism applicable to all involved agencies that allows the lead agency to enforce its schedules.

**Recommendation 4 – Creation of a consolidated record for a NEPA review and all permitting decisions.**

The lead agency should be charged with the responsibility to develop a consolidated record for the NEPA review and EIS development, and all permitting decisions required as a result. Once again, this encourages the various federal and state agencies to work together in a cooperative fashion to develop a consolidated record. In order to make sure that agencies take this requirement seriously, Congress should require that this consolidated record be the record used for all subsequent appeals or Administrative reviews.

A consolidated record is important. Our industry has found that some agencies have “sat out” FERC NEPA reviews of proposed projects, and then subsequently appealed FERC’s approval decisions and attempted to develop a *de novo* review of all the facts previously considered by FERC and the cooperating agencies. Developing an entirely new record, when ample opportunity is given to participate in the development of the first one, is time-consuming and unfair to all of the agencies that did participate cooperatively. This consolidated record requirement is a part of the Energy Policy Act with respect to natural gas projects; it should be considered for other NEPA approvals as well.

**Recommendation 5 – Streamline subsequent reviews and permit approvals for projects managed pursuant to the Pipeline Safety Improvement Act.**

The natural gas industry is facing a huge amount of work to comply with the safety regulations codified pursuant to the passage, in 2002, of the Pipeline Safety Improvement Act. The Act created specific timeframes for all natural gas transmission pipelines to assess (or inspect) the integrity of all pipeline located in populated areas. By December of 2012, all pipelines located in these “high consequence areas” must have a baseline assessment of its integrity. These inspections, and any subsequent repairs, will require significant excavation activity, triggering permit requirements. The ability to obtain the necessary permits, so that this inspection/repair activity can be completed pursuant to the Congressionally mandated timeframe, will be critical to the success of the program.

Most of the effected pipelines have already developed an EIS years ago, as part of any construction or expansion activity. We need to make certain that the permitting process for the integrity management program recognizes previous work, and gives pipeline operators some flexibility to meet requirements that, after all, have been mandated for safety purposes by Congress.

In the event that a pipeline segment has work that must be performed pursuant to compliance with the regulations under the Pipeline Safety Improvement Act and that

particular pipeline segment has never had an EIS performed on it's facilities, NEPA should allow for expedited analysis of impacts by the lead agency and the establishment of a streamlined review schedule for all cooperating agencies that meets the safety requirements imposed by the Department of Transportation and its Pipeline and Hazardous Materials Safety Administration..

**Recommendation 6 – Make a “Team Permitting” opportunity available on voluntary basis.**

This voluntary process, would be one similar to the “Team Permitting” concept employed within the State of Florida, pursuant to Chapter 403.075, Florida Statutes, for early coordination with regulatory agencies, local governments, and special interest groups for development related permitting.

An amendment to NEPA could include a section to establish the opportunity for a developer to engage a lead agency, other regulatory stakeholders, and interested parties in an open process in which all NEPA issues could be identified and dealt with to the satisfaction of those involved. In this voluntary process, an applicant seeking any federal permit applicable for NEPA review could enter into a non-binding agreement with the federal “lead agency.” This would be initiated by the applicant and would be only on a voluntary basis. Once initiated by the applicant, the lead agency would notify all potential cooperating agencies of the opportunity to join this collaborative and advisory “Team Permitting Group.” A federal notice of such meetings of the group would be published and any interested party could join the review process (this could include any environmental group or other interested party). A time frame schedule for review and processing of all permits would be developed by the lead agency and the Team Permitting group and all milestone dates for processing would be met by the applicant as well as the agencies involved.

In Team Permitting all permitting agencies and interested parties would meet together and work simultaneously on the technical aspects of the proposed development and to reduce the overall total impact of the project. This would also include any necessary mitigation. This collaborative effort on the technical aspects of the proposal would greatly help the various regulatory permitting personnel who too often work in a silo effect as they assess the impact of the proposed development and any mitigation that might be required. In order to enter into this voluntary Team Permitting process, the applicant would pledge, in the beginning, to do what will be referred to as “net ecosystem benefits” which will be over and above any level of mitigation assigned by the various permitting agencies. No “net ecosystem benefits” would be performed by the applicant until all timely permits are issued, and required mitigation is agreed to by the parties, in accordance with the schedule agreed to in the beginning by the Team Permitting Group. Their respective regulatory division would issue all individual required environmental permits from federal regulatory agencies, from any state government, as well as any local government. Again, the agreed to “net ecosystem benefits” will not be performed by the applicant unless all permits are issued in accordance with the agreed to schedule.

**Recommendation 7 - Streamline NEPA permit reviews and approvals by adopting a process similar to the one used pursuant to CERCLA (or Superfund).**

Permitting for projects undergoing NEPA review (especially those that have an existing EIS) could be managed in a manner similar to the way in which permits are expedited pursuant to CERCLA. In the early 1980's, Congress faced a similar situation with response actions needed under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as Superfund. This legislation required the EPA or potentially responsible parties to respond to releases of hazardous constituents. During the initial implementation of CERCLA, it was quickly recognized that Federal, State or local requirements imposed significant delays to this critical work. To avoid these delays, legislation was passed to require EPA to impose all substantive requirements of these rules, but exempted the projects from the administrative aspects of Federal, State and local requirements. Natural gas facilities could be sited, permitted, constructed, repaired and upgraded, pursuant to an amended NEPA that would have language similar to the language contained in Section 121 of CERCLA.

Under this revised process, during the NEPA review the lead Agency would act in a manner similar to the role EPA plays in authorizing work under CERCLA. Applicants would be required to discuss and comply with substantive requirements of all applicable, relevant and appropriate requirements (known as ARARs under CERCLA). The public and any affected Agencies would have an opportunity to comment on all planned work. However, the approval under NEPA would also constitute approval for all permits necessary to implement the work. This would greatly streamline the process to gain approval for needed maintenance or new construction while still insuring all technical requirements are met.

Let me conclude by thanking the Committee for allowing me to testify today. I would be happy to answer any questions you might have.

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